



## Agency Law to Be Effective September 1, 1997

Missouri license law was significantly amended by the Agency Bill passed during the 1996 legislative session and signed into law by Governor Carnahan. The amendments become effective September 1, 1997, and will significantly affect the way all licensees conduct their business.

The Commission appointed two subcommittees immediately after the bill was signed into law—one to revise the regulations so as to clarify how licensees must act to comply, and the other to plan continuing education Core courses so that all licensees can learn how to comply with the law and the new regulations, which were filed in early January. Only two Core courses will be available—Agency Law and Regulations for Residential Real Estate and Agency Law and Regulations for Commercial Real Estate. All licensees must take at least one of these courses to renew licensure in 1998. The Commission expects to approve Core courses to become available in late summer or fall of 1997.

The text of the agency statutes is set out below.

339.710-339.860, RSMo:  
Agency Relationships

339.710 For purposes of sections 1 to 16 (339.710 through 339.860, but referred to in this reprint as Sections 1 to 16 of this act), the following terms mean:

(1) "Adverse material fact", a fact related to the physical condition of the property not reasonably ascertainable

or known to a party which affects the value of the property;

(2) "Affiliated licensee", any broker or salesperson who works under the supervision of a designated broker;

(3) "Agent", a person or entity acting under the provisions of chapter 339, RSMo;

(4) "Broker disclosure form", the current form prescribed by the commission for presentation to a seller, landlord, buyer or tenant who has not entered into a written agreement for brokerage services;

(5) "Brokerage relationship", the relationship created between a designated broker, the broker's affiliated licensees, and a client relating to the performance of services of a broker as defined in section 339.010, RSMo., and sections 1 to 16 of this act;

(6) "Client", a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 1 to 16 of this act;

(7) "Commission", the Missouri real estate commission;

(8) "Confidential information", information made confidential by sections 1 to 16 of this act or any other statute or regulation, or written instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or by a source other than the licensee;

(9) "Customer", a seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee;

(10) "Designated agent", a licensee named by a designated broker as the limited agent of a client as provided for in section 12 of this act;

(11) "Designated broker", the indi-

vidual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker;

(12) "Dual agent", a limited agent who, with the written consent of all parties to a contemplated real estate transaction, has entered into a brokerage relationship with and therefore represents both the seller and buyer or both the landlord and tenant;

(13) "Licensee", a real estate broker or salesperson as defined in section 339.010, RSMo;

(14) "Limited agent", a licensee whose duties and obligations to a client are those set forth in sections 3 to 5 of this act;

(15) "Ministerial acts", those acts that a licensee may perform for a person that are informative in nature and do not rise to the level of active representation on behalf of a person. Examples of these acts include, but are not limited to:

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(a) Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;

(b) Responding to telephone inquiries from a person concerning the price or location of property;

(c) Attending an open house and responding to questions about the property from a consumer;

(d) Setting an appointment to view property;

(e) Responding to questions of consumers walking into a licensee's office concerning brokerage services offered on particular properties;

(f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;

(g) Describing a property or the property's condition in response to a person's inquiry;

(h) Showing a customer through a property being sold by an owner on his or her own behalf; or

(i) Referral to another broker or service provider;

(16) "Single agent", a licensee who has entered into a brokerage relationship with and therefore represents only one party in a real estate transaction. A single agent may be one of the following:

(a) "Buyer's agent", which shall mean a licensee who represents the buyer in a real estate transaction;

(b) "Seller's agent", which shall mean a licensee who represents the seller in a real estate transaction; and

(c) "Landlord's agent", which shall mean a licensee who represents a landlord in a leasing transaction;

(d) "Tenant's agent", which shall mean a licensee who represents the tenant in a leasing transaction;

(17) "Subagent", a designated broker, together with the broker's appointed agents, engaged by another designated broker to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to section 3 or 4 of this act as does the client's designated broker.

339.720 1. A licensee's general duties and obligations arising from the limited agency relationship shall be disclosed in writing to the seller and the buyer or to the landlord and the tenant pursuant to sections 6 to 8 of this act. Alternatively, when engaged in any of the activities enumerated in sec-

tion 339.010, RSMo, a licensee may act as an agent in any transaction in accordance with a written agreement as described in section 8 of this act.

2. A licensee shall be considered a buyer's or tenant's limited agent unless:

(1) The designated broker enters into a written seller's agent or landlord's agent agreement with the party to be represented pursuant to subsection 2 of section 8 of this act;

(2) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection 5 of section 8 of this act;

(3) The designated broker enters into a written agency agreement pursuant to subsection 6 of section 8 of this act; or

(4) The designated broker is performing ministerial acts.

3. Sections 1 to 16 of this act do not obligate any buyer or tenant to pay compensation to a designated broker unless the buyer or tenant has entered into a written agreement with the designated broker specifying the compensation terms in accordance with subsection 3 of section 8 of this act.

4. A licensee may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent or as a subagent if the licensee complies with sections 1 to 16 of this act in establishing the relationships for each transaction.

339.730 1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client;

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner

regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

(c) Disclosing to the client all adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 1 to 16 of this act, subsection 2 of section 339.100, RSMo, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

2. A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

3. A licensee acting as a seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. The adverse material facts may include facts pertaining to:

(1) Environmental hazards affecting the property;

(2) The physical condition of the property;

(3) Material defects in the property;

(4) Material defects in the title to the property;

(5) Material limitation on the client's ability to perform under the terms of the contract.

A seller's or landlord's agent owes no duty to conduct an independent

inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

4. A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

5. A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

339.740 1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of any written agreement made with the client;

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(c) Disclosing to the client adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 1 to 16 of this act, subsection 2 of section 339.100, RSMo, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

2. A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

3. A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. The adverse material facts may include facts concerning the client's financial ability to perform the terms of the transaction. A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

4. A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

5. A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting on the buyer's or tenant's behalf as a subagent shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

339.750 1. A licensee may act as a dual agent only with the consent of all

parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 8 of this act.

2. A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 3 and 4 of this act unless otherwise provided for in this section.

3. Except as provided in subsections 4 and 5 of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is material to the transaction unless it is confidential information as defined in section 1 of this act.

4. The following information shall not be disclosed by a dual agent without the consent of the client to whom the information pertains:

(1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(2) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(3) What the motivating factors are for any client buying, selling, or leasing the property;

(4) That a client will agree to financing terms other than those offered; and

(5) The terms of any prior offers or counter offers made by any party.

5. A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure. A dual agent does not terminate the dual agency relationship by making any required or permitted disclosure.

6. In a dual agency relationship there shall be no imputation of knowledge or information between the client and the dual agent or among persons within an entity engaged as a dual agent.

339.760 1. Every designated broker shall adopt a written policy which

*(continued on page 4)*

identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

2. A designated broker shall not be required to offer or engage in more than one of the brokerage relationships enumerated in section 2 of this act.

339.770 1. At the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a written agreement for services as described in subsection 15 of section 1 of this act, the licensee shall provide that person with a written copy of the current broker disclosure form which has been prescribed by the commission. If the prospective customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.

2. When a seller, landlord, buyer, or tenant has already entered into a written agreement for services with a designated broker, no other licensee shall be required to make the disclosures required by this section.

3. Before engaging in any of the activities enumerated in section 339.010, RSMo, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide to the customer the current broker disclosure form prescribed by the commission.

4. Before engaging in any of the activities enumerated in section 339.010, RSMo, a licensee working as an agent or subagent of the buyer or tenant with a seller or landlord who is not represented by a licensee shall provide to the customer the current broker disclosure form prescribed by the commission.

5. The written disclosure required pursuant to subsections 1, 3, and 4 of this section shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure shall not constitute a contract with the licensee. If the customer refus-

es to sign the disclosure, the licensee shall set forth, sign, and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.

6. Disclosures made in accordance with sections 1 to 16 of this act shall be sufficient as a matter of law to disclose brokerage relationships to the public.

339.780 1. All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker.

2. Before engaging in any of the activities enumerated in section 339.010, RSMo, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 3 of this act and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

3. Before or while engaging in any acts enumerated in section 339.010, RSMo, except ministerial acts defined in section 1 of this act, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 4 of this act and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

4. Before engaging in any of the activities enumerated in 339.010, RSMo, a designated broker intending to act as a dual agent shall enter into a written agreement with the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The agreement shall include a licensee's duties and responsibilities specified in section 5 of this act and the terms of compensation.

5. Before engaging in any of the activities enumerated in section 339.010, RSMo, a designated broker intending to act as a subagent shall enter into a written agreement with the

designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

6. Nothing contained in this section shall prohibit the public from entering into written contracts with any broker which contain duties, obligations, or responsibilities which are in addition to those specified in this section.

339.790 1. The relationships set forth in this section commence on the effective date of the real estate broker's agreement and continue until performance, completion, termination or expiration of that agreement.

2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:

(1) Accounting in a timely manner for all money and property related to, and received during, the relationship; and

(2) Treating as confidential information provided by the client during the course of the relationship that may reasonably be expected to have a negative impact on the client's real estate activity unless:

(a) The client to whom the information pertains grants written consent;

(b) Disclosure of the information is required by law;

(c) The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the real estate brokerage or the affiliated licensee; or

(d) Disclosure is necessary to defend the designated broker or an affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee.

339.800 1. In any real estate transaction, the designated broker's compensation may be paid by the seller, the landlord, the buyer, the tenant, or a third party or by sharing the compensation between designated brokers.

2. Payment of compensation by itself shall not establish an agency relationship between the party who paid the compensation and the designated broker or any affiliated licensee.

3. A seller or landlord may agree that a designated broker or subagent may share with another designated broker the compensation paid by the seller or landlord.

4. A buyer or tenant may agree that a designated broker or subagent may share with another designated broker the compensation paid by the buyer or tenant.

5. A designated broker may be compensated by more than one party for services in a transaction with the knowledge of all the parties at or before the time of entering into a written contract to buy, sell, or lease.

339.810 1. A client shall not be liable for a misrepresentation of such client's limited agent or subagent arising out of the limited agency agreement unless the client knew or should have known of the misrepresentation.

2. A licensee who is serving as a limited agent or subagent of a client shall not be liable for misrepresentation of such licensee's client arising out of the brokerage agreement unless the licensee knew or should have known of the misrepresentation.

3. A licensee who is serving as a limited agent of a client shall not be liable for a misrepresentation of any subagent unless the licensee knew or should have known of the misrepresentation. A broker shall not be liable for misrepresentation of an affiliated licensee unless the broker knew or should have known of the misrepresentation.

4. A licensee who is serving as a subagent shall not be liable for a misrepresentation of the limited agent unless the subagent knew or should have known of the misrepresentation.

339.820 A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing affiliated licensees as designated agents to the exclusion of all other affiliated licensees. A designated broker shall not be considered to be a dual agent solely because such broker makes an appointment under this section, except that any licensee who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction shall be a dual agent and

shall be required to comply with the provisions governing dual agents.

339.830 1. All designated agents to the extent allowed by their licenses shall have the same duties and responsibilities to the client and customer pursuant to sections 3 to 5 of this act as the designated broker except as provided in section 12 of this act.

2. All affiliated licensees have the same protections from vicarious liability as provided in sections 1 to 16 of this act as does their designated broker.

339.840 Sections 1 to 16 of this act shall supersede the common law of agency with respect to whom the fiduciary duties of an agent are owed in a real estate transaction. Sections 1 to 16 shall not be construed to limit civil actions for negligence, fraud, misrepresentation or breach of contract.

339.850 The commission shall adopt and promulgate rules and regulations to carry out sections 1 to 16 of this act. No rule or portion of a rule promulgated pursuant to the authority of sections 1 to 16 of this act shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

339.860 Sections 1 to 16 of this act shall become effective on September 1, 1997.

## Proposed Agency Regulations

A number of amendments to Chapter 8 of the Rules and Regulations need to be made to implement the new agency legislation. The Commission has been working with licensees throughout the summer and fall to draft those amendments. The amendments are expected to be published in the January/February *Missouri Register*, published by the Secretary of State. A 30-day comment period will follow publication, and persons who wish to comment on the proposed amendments must submit their comments, in writing, within that period.

Material to be added is **in bold type, underlined**. Material to be deleted is ~~in plain type, stricken through~~.

4 CSR 250-8.020 Broker Supervision and Improper Use of License and Office

(1) Individual **brokers, designated brokers, and office managers/supervising brokers** shall be responsible for supervising the real estate related activities **including the protection of any confidential information as defined under 339.710.8 RSMo** of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership. A broker shall not be held responsible for inadequate supervision if—

(A) A licensed or unlicensed person violates a provision of Chapter 339, RSMo or the rules for it in conflict with the supervising broker's specific written policies or instructions;

(B) Reasonable procedures have been established to verify that adequate supervision was being performed;

(C) The broker, upon learning of the violation, attempted to prevent or mitigate the damage;

(D) The broker did not participate in the violation;

(E) The broker did not ratify the violation; and

(F) The broker did not attempt to avoid learning of the violation.

(2) A broker shall not permit licensed and unlicensed persons affiliated with the broker to—

(A) Establish and carry on real estate brokerage business for their own benefit, directly or indirectly, where the broker's primary interest is the receipt of a fee or other valuable consideration for the use of the broker's license by others; or

(B) Where the broker has no control or only nominal control of the business affairs conducted under the broker's license or is only nominally associated with the business.

**(3) Appointments of designated agents under Section 339.820, RSMo shall be entered into by the designated broker or office manager/supervising broker on behalf of that broker and affiliated licensees.**

**(4) Appointments of designated agents under Section 339.820, RSMo shall be made in a written agreement for a brokerage relationship or other written notice to the client.**

**(5) Individual brokers, designated brokers, and office manager/supervising brokers shall not be considered to**

**be a dual agent solely because such broker makes an appointment under section 339.820. However, when such broker supervises the licensees for both sides of a transaction, that broker will be a dual agent upon learning confidential information about either party to a transaction or upon being consulted by any licensee involved in the transaction. Also, when the broker supervises the licensee for one side of the transaction and personally represents the other side, that broker will be a dual agent.**

#### **4 CSR 250-8.090 Listings Brokerage Relationship Agreements or Authorization**

~~(1) A licensee shall not advertise or place a sign upon any property offering it for sale or lease to prospective customers unless a broker holds a currently effective written listing agreement or other written authorization signed by the seller.~~

##### **(1) Seller's Agency (Listing) Agreement.**

~~(2)(A) A licensee shall not show residential property unless a broker holds a currently effective written listing agreement or other written authorization agreement for brokerage services signed by the seller by all owners.~~

~~(3)(B) Every written listing agreement or other written authorization agreement for brokerage services shall contain all of the following:~~

~~(A) The legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property;~~

~~(B) All of the terms and conditions under which the property is to be sold, leased or exchanged, including;~~

- ~~1. The price;~~
- ~~2. The commission to be paid (including any and all bonuses);~~
- ~~3. A definite beginning date;~~
- ~~4. An expiration date;~~
- ~~5. The licensee's duties and responsibilities;~~

~~6. Specification of whether an offer of subagency may be made to any other designated broker;~~

~~7. The signatures of all sellers and the listing broker or listing agent; and~~

~~8. The type of listing, that is, exclusive agency, exclusive right to sell or open.~~

**9. The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property; and**

**10. All other terms and conditions, including the terms and compensation to cooperating brokers, under which the property is to be sold, leased or exchanged.**

~~(4)(C) The agreement shall contain no provision requiring an owner to notify the broker of intent to cancel the listing after the expiration date. Any change to the listing agreement or other written authorization agreement for brokerage services must contain the initials of all parties.~~

~~(5)(D) The licensee shall give a~~ **A legible copy of every written listing agreement or other written authorization shall be given agreement for brokerage services to the owner of the property at the time the signature of the owner is obtained.**

~~(6)(E) A licensee shall not negotiate or enter into a listing agreement with an owner if the licensee knows, or has reason to know, that the owner has a written unexpired exclusive agency or exclusive right to sell listing agreement as to the property with another broker, unless the owner initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into a listing which will take effect after the expiration of the current listing.~~

~~(7)(F) No licensee shall make or enter into a net listing agreement for the sale or lease of real property or any interest in real property; this agreement is defined as one that stipulates a net price to be received by the owner with the excess over that price to be received by the broker as commission.~~

~~(8) On taking a listing, a licensee shall use due care and diligence to investigate, substantiate and verify the accuracy of all information supplied by an owner and contained in the listing, which the licensee reasonably knows or should know is material or substantial or may be relied upon by a buyer.~~

~~(9)(G) A listing agreement may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original listing agreement.~~

##### **(2) Buyer Agency Agreement**

**(A) Every written buyer or tenant authorization shall contain:**

**1. A description of the type of property sought by the buyer or tenant;**

**2. The commission or fee to be paid (including any and all bonuses);**

**3. A definite beginning date;**

**4. A definite expiration date;**

**5. The licensee's duties and responsibilities;**

**6. Specification of whether an offer of subagency may be made to any other designated brokers;**

**7. The signatures of the buyers or tenants and the broker or agent;**

**8. The type of agreement, that is, exclusive agency, exclusive right to represent or open; and**

**9. All other terms and conditions prescribed by the buyers or tenants.**

**(B) The agreement shall contain no provision requiring a buyer or tenant to notify the broker of intent to cancel the agreement after the expiration date. Any change to the agreement or other written authorization must contain the initials of all parties.**

**(C) The licensee shall give a legible copy of every written agreement or other authorization to the buyer or tenant at the time the signatures are obtained and a copy of the written authorization shall be retained in the broker's office.**

**(D) A licensee shall not negotiate or enter into an agency agreement with a buyer or tenant if the licensee knows, or has reason to know, that the buyer or tenant has a written unexpired exclusive agreement with another broker, unless the buyer or tenant initiates the discussion and provided the licensee has not directly or indirectly solicited the discussion, in which case the licensee may negotiate and enter into an agreement which will take effect after the expiration of the current agreement.**

**(E) A buyer or tenant agency agreement may not be assigned, sold or otherwise transferred to another broker without the express written consent of**

all parties to the original buyer or tenant agency agreement.

**(3) Other Written Authorization.** Written authorization to show residential property without a brokerage agreement must contain:

(A) A definite beginning date;

(B) An expiration date;

(C) The signatures of all sellers or lessors and the licensee;

(D) The legal description or the complete street address of the property, which includes the city where the property is located; or, in the absence of a legal description or address, a clear description which unmistakably identifies the property;

(E) Permission to enter and show the property;

(F) The commission or fee to be paid (including any and all bonuses; and

(G) The licensee's duties and responsibilities.

**RESCIND ENTIRE EXISTING 250-8.095 and replace with following:**

#### **250-8.095 Agency Disclosure**

**(1) A licensee acting as an agent in a real estate transaction shall make oral or written disclosure of the licensee's agency status to a prospective customer or customer's agent no later than the first showing of real estate.**

**(2) Written disclosure shall be made no later than the presentation of an offer to purchase. The written disclosure must identify the licensee's agency status and shall identify the sources of compensation, and shall be signed and dated by the prospective customer. A signed copy shall be given to the prospective customer and a copy shall be retained by the disclosing licensee's broker. If the prospective customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.**

#### **250-8.097 Broker Disclosure Form**

**(1) At the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who**

**has not entered into a written agreement for services as described in 339.710.5, RSMo, the licensee shall provide that person with a written copy of the current broker disclosure form prescribed by the Missouri Real Estate Commission. If the prospective customer refuses to sign the disclosure, the licensee shall set forth, sign and date a written explanation of the facts of the refusal and the explanation shall be retained by the licensee's broker.**

**(2) The licensee providing the Broker Disclosure Form is required to see that the prescribed form is completed in its entirety.**

250-8.110 Licensee's Interest in Transactions; Relationship with Parties

~~(6) A licensee shall disclose to a prospective buyer or lessee all material facts of which the licensee has knowledge or which are readily available to the licensee including the condition of any property which the licensee is offering for sale or lease. An "as is clause" written into a contract for the sale of real estate does not relieve a licensee of the requirements of this section. 339.100.2 (2), RSMo.~~

250-8.150 Closings and Closing Statements

**(2) A broker may arrange for a closing to be administered by a title company, an escrow company, a lending institution or an attorney, in which case the broker shall not be required to sign the closing statement; however, it shall remain the each broker's responsibility to require closing statements to be prepared, to review the closing statements to verify their accuracy and to deliver the closing statements to the buyer and the seller or cause them to be delivered. . . .**

~~(3) The listing and selling broker. The brokers for the buyer or tenant and the seller or landlord shall retain legible copies of both buyer's and seller's signed closing statements.~~

250-8.155 Closing A Real Estate Firm

**(1) (A) 3. Notify all current listing, buyer or tenant agreement and management contract clients as well as parties and co-brokers to existing con-**

**tracts, in writing, advising of the date the firm will close. All listing, buyer, tenant and management clients must be advised in writing that they may enter into a new listing, buyer, tenant or management agreement with the broker of their choice;**

**(2) (A) 4. Notify all current listing, buyer or tenant agreement, and management contract clients in writing advising of the date the firm will close or suspend activity, and that they may enter into a new listing, buyer or tenant agreement or management agreement with the firm of their choice;**

250-8.160 Retention of Records

**(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; broker disclosure forms and brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. . . .**

## **Agency Questions and Answers**

Although the agency law will not be in effect until September, the Commission has received a number of questions about how it will work in actual practice. Many of the questions are the "what if" kind that the Commission will not be able to answer until it monitors industry practices after the bill becomes effective. Some questions, however, can be answered now to shed some light on the way real estate agency will be practiced starting September first.

**Q.** How does a seller know, when an agent appears with a key to his house and prospects in tow, if that agent is working as a subagent or buyer's agent?

**A.** It is always best to assume that the agent is representing the other party unless specifically told otherwise.

**Q.** May I design my own Broker Disclosure Form?

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## Questions and Answers

(continued from page 7)

- A. No. You are required to present to the public *only* the form prescribed by the Commission. The draft form will be published in the next Commission Newsletter, and camera-ready copy of the final form will be available as soon as possible after that.
- Q. In a multi-office firm, can the managing broker designate agents, or must all designation be made by the designated broker?
- A. The designated broker may, by *written policy*, delegate to the office managers/supervising brokers the authority to designate agents to represent the buyer and the seller.
- Q. What kind of written authority, if any, is necessary to show a FSBO? Can you show a FSBO to a customer?
- A. You must have written authorization from the seller to show a FSBO. You may then show the FSBO to a customer as a "ministerial act"; however, you may not go beyond the showing without an agency agreement.
- Q. Can an unlicensed person perform "ministerial acts"?
- A. The ministerial acts defined under 339.710, RSMo (above) can be performed only by a licensee. Setting appointments to show listed property, as well as accompanying appraisers, inspectors, and contractors or other third parties are functions that can be performed by an unlicensed person. For a more complete list of things an unlicensed person can and cannot do, refer to the March 1996 Newsletter.
- Q. Can you work with a potential buyer who will not sign a buyer agency agreement?
- A. You can perform ministerial acts or, provided there is a written subagency agreement, you can act as subagent to the seller. If there is no subagency agreement and the buyer does not want to enter into an agreement, the agent must walk

away from the buyer and the potential transaction.

- Q. Can both the buyer and the seller be customers? That is, can an agent assist in a transaction where there is no agency agreement?
- A. No. The agent must represent someone.
- Q. Will there be forms available to cover agency agreements effective over the period of transition from the old law to the new—forms that build in the new limited agency language and state that it will be effective September 1?
- A. The Commission will not be designing transition forms. A broker may, however, use standard forms as provided under 4 CSR 250-8.140. The Commission will check for compliance with statutes and regulations in effect at the time of the agreement unless the courts direct otherwise.
- Q. Is there a "grace period" after September first to develop and provide the written office policy manual required by the law?
- A. No. *Every real estate brokerage must have a written office policy manual in place on September 1, 1997.*
- Q. Can the appointment of designated agents be made in the listing agreement?
- A. Yes. Keep in mind, however, that if the designation of agents is made on the listing agreement, neither the designation nor the listing is effective until the listing is signed by the designated broker or the managing/supervising broker. The designation can also be made on a separate form, which may eliminate the need for the broker or managing/supervising broker to sign the listing.
- Q. Is a property manager required to review the broker disclosure form with each prospective tenant prior to showing the landlord's property?
- A. Yes, agency disclosure forms are required prior to showing commercial or residential property.

## Education Coordinator Retires

Gail Eldredge, who has served the Commission as Education Coordinator since 1985, retired from service on December 31. She is a charter member of the Real Estate Educators Association, established in 1979, and has been active both nationally and in its Mid-America REEA chapter.

Since moving to Missouri from Colorado in the early 1960's and completing her master's degree shortly thereafter, Gail pursued a professional life in education, teaching in Missouri public schools, Lincoln University, and UMC. Her work in education administration started at Columbia College, where she was Assistant Dean of their widespread extended studies program before joining the Missouri Association of REALTORS as Education Director in 1977.

The Commission extends its best wishes to Gail as she pursues full time the outdoor hobbies she has enjoyed for many years: gardening, wilderness camping, traveling, and last but certainly not least—fishing. She hopes her many friends in the real estate industry will stay in touch with her at her home in Columbia.

## Disciplinary Actions

**HAMILTON, CHARLES R.**  
St. Louis, MO

By order issued from the Commission, Hamilton's license was revoked on July 25, 1996.

Violation: 339.100.2 (17) RSMo 1994

On February 3, 1995, Hamilton pled guilty to a criminal indictment charging five counts of Sodomy, three counts of Sexual Abuse in the First Degree, one count of Furnishing Pornography To Minors, and Assault in the Third Degree.

**VIRGIL JOHNSON REAL ESTATE COMPANY INC.**  
St. Louis, MO

Joint stipulation, six month suspension starting October 3, 1996 to April 3,



1997, followed by five years probation from April 3, 1997 to April 3, 2002.

Violation: 4 CSR 250-8.155 (2)(B)

On April 25, 1995, the Administrative Hearing Commission for the State of Missouri entered a Consent Order finding cause to discipline the real estate license of Virgil Johnson Real Estate Co., Inc., and approving the discipline of six (6) months suspension and five (5) years probation. As of September 18, 1996, Virgil Johnson Real Estate Co., Inc., had not suspended operations in accordance with the terms of discipline. Virgil Johnson Real Estate Co., Inc. had not complied with the provisions of 4 CSR 250-8.155 (2)(B). Virgil Johnson Real Estate Co., Inc. maintained its certificate of licensure during the period of suspension.

Virgil Johnson Real Estate Co., Inc.'s conduct violates the terms and conditions of the Consent Order, and 4 CSR 250-8.155 (2)(B), thus entitling the Commission to impose further discipline.

#### **VOGES, GEORGE D.**

St. Louis, MO

By order from the MREC resulting from a probation violation hearing, one year suspension starting November 8, 1996 through November 8, 1997, followed by three years probation from November 8, 1997 through November 8, 2000.

Violations: 339.100.2(1), (14), (18), 339.105.1 RSMo 1994 and 4 CSR 250-8.020, 250-8.060(1), 250-8.090 (3), 250-8.095(1)(A), (1)(B), 250-8.100 (3), 250-8.120 (1), (4), and 250-8.160 (1).

An audit of the escrow account and business records for Voges Real Estate Company, The Prudential Voges Realtors, revealed the following violations: (1) Funds were disbursed from the company's escrow account prior to the closing of a transaction without written authorization; (2) A shortage was noted in the escrow account; (3) The licenses of all of the licensees associated with the company were not displayed upon request; (4) The listing agreement did not include the signatures of all of the sellers and/or did not properly identify the property; (5) The respondent failed to confirm in writing that agency disclosure had been made

to the buyer; (6) The buyer's and/or seller's signature was not dated on the contract; and (7) Earnest money was deposited late into the escrow account.

### **The Most Common Complaints Received by the Commission**

Commission staff receives many telephone calls from members of the public in addition to formal written complaints. The reasons for nearly ninety percent of both calls and complaints are similar: perceived misrepresentation or omission of material facts regarding the property purchased. Specifically, the calls or complaints are about:

- A. Leaking basement or foundation walls,
- B. Septic problems,
- C. Property line disputes,
- D. Structural defects,
- E. Termite damage,
- F. Leaking roofs or misrepresentation about the age of the roof,
- G. School districts, and
- H. Defective furnaces, air conditioners, and appliances.

While it is not required by Missouri law, it may be in everyone's best interests for the seller to provide a statement of disclosure of the condition of the property. The licensee should review the disclosure statement to ensure all questions are answered, and the listing agent should give a copy to any selling agent who shows the property even if the selling agent doesn't request one. All licensees should inform prospective buyers of the various inspections and explain the benefits of having inspections conducted by qualified professionals. It is never in the licensee's best interest to discourage professional inspections.

Other types of complaints are about:

A. Agency: The buyers think the licensee is working for them when the agent is actually a subagent of the seller. The best solution to this potential problem is for the licensee to be sure the buyers understand the agency relationships—up front, when making verbal disclosure at the beginning of the relationship and again at the signing of

the written disclosure. After the new agency law becomes effective, all agency relationships will likely be much easier for the public to understand.

B. Earnest money return: This is a touchy area because of the possibility of civil action by either the buyer or seller. The contract language usually governs the circumstances surrounding earnest money, and that language should be clear to both buyer and seller before they enter into the contract. Commission regulations reference a need for mutual release of earnest money *only* when there is a dispute.

C. Disclosure of license status when a licensee is selling or buying property: Licensees must always disclose license status in writing—even if the license has been placed inactive—when involved in a transaction with a member of the public. The written disclosure is usually given in the sales contract, after the licensee's name. When licensees are selling their own property, they must always include "... by owner-agent" (see 4 CSR 250-8.070 (2) (B) in all advertisement including yard signs. If, however, the property is listed with a company and the company is placing the ad or yard sign, "owner-agent" is not required. In all cases, the written disclosure before purchase is required.

D. Brokers frequently complain that a licensee transferring to a different company is contacting listing clients before—or soon after—leaving their company, and is soliciting property owners to terminate the existing listing and list with the new company. The best method of preventing this situation from occurring is for brokers to make clear to their agents that listing agreements are binding contracts *between the sellers and the real estate firm, not the sellers and the individual licensee*. The authority to terminate any listing agreement should be retained by the designated broker or office manager and should not be granted to individual licensees. The firm's office policy manual should set this out clearly, as should the written agreement between the licensee and the firm.

The Commission does not follow up on telephone calls alleging possible violations. It does, however, respond

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## Common Complaints

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quickly upon receipt of a sworn statement of complaint. A copy of the complaint and all the supporting documents are mailed to all licensees named in the complaint, and the licensee is asked to submit a written response within fifteen days. After thirty days, the Commission may seek disciplinary action for failure to respond.

When the licensee responds, a copy of the response is sent to the complainant, then both the complaint and the response are placed on the next meeting agenda to be reviewed by the Commission, which will decide to (1) dismiss the complaint, if it is determined the licensee did not violate the license law or regulations; (2) send a letter of caution; or (3) request staff to investigate the complaint. If an investigation is authorized, the staff investigator will interview the complainant, the licensees involved, and any witnesses. He or she will verify the statements of all the parties and obtain whatever additional information or documentation the Commission asks for. The investigator's narrative report is placed on the Commission's meeting agenda.

After reviewing the investigator's report, along with the complaint, the responses, and the documents, the Commission will either dismiss the complaint, send letters of caution as appropriate, or refer the case to the Attorney General's office for disciplinary action.

## Don't Delay Your Work Permit

Licensees who need to have quick turn-around of an application for a work permit or other document from the Commission sometimes request it be sent by overnight mail or other special carrier. Anyone using a quick-delivery method *must complete the information on the mailing information form.*

The form must be completed to show the licensee's name and the company

name as *both* shipper and receiver and *must show the company's account number.* The Commission does not pay the shipping charges on any overnight or second-day delivery letters. Failure to include the account number will result in delaying the time the licensee can start work.

## Is a Reciprocal License the Way to Go for Someone You Know?

The Missouri Real Estate Commission has reciprocal agreements with several surrounding states—Arkansas, Colorado, Illinois, Iowa, Kansas, Kentucky, Mississippi, Nebraska, Oklahoma, and Tennessee.

To be eligible for a reciprocal license from any of these states, the candidate must be a resident of the state he or she is reciprocating *from.* For example, if you are licensed as a salesperson or broker in Kansas, you must be a Kansas resident at the time you apply for a Missouri salesperson or broker license. Each state has specific licensure requirements to meet before one is eligible for a reciprocal license. These requirements vary from being eligible immediately upon licensure in the resident state to having to wait several years; from no required prelicense education to completion of the Missouri prelicense course of study; from no examination requirement to satisfactory completion of the state-specific component.

In all instances (excluding the situations when Missouri prelicense school is completed before the reciprocal license is issued), the candidate for a reciprocal license must meet Missouri's twelve-hour continuing education requirement prior to expiration of the Missouri reciprocal license. *All* Missouri broker licenses expire on June 30 of even-numbered years and *all* Missouri salesperson licenses expire on September 30 of even-numbered years. Continuing education for renewal *cannot* be taken after the date of license expiration.

Licensees who have completed continuing education in other states may earn up to the nine hours of elective credit by completing and submitting an Individual Request for Continuing Education Credit, attaching completion certificates of courses taken in other states, and submitting the form and attachments with a ten dollar fee. They will receive a copy of the request form back indicating the number of hours accepted for Missouri credit. In almost all cases, the three-hour Core Curriculum must be completed through a Missouri-approved sponsor. In the past, both elective and Core courses have been offered by correspondence through Missouri-approved sponsors.

Persons licensed in other states who are interested in a Missouri reciprocal license should contact the Commission office direct to ensure they receive the most current information available. They should request the appropriate application by writing the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102, or calling (573-751-2628).

Missouri licensees who are interested in applying for reciprocal licenses in other states may contact those states at the numbers shown below.

Arkansas Real Estate Commission  
(501) 682-2732

Colorado Real Estate Commission  
(303) 894-2166

Illinois Real Estate Commission  
(217) 785-9300

Iowa Real Estate Commission  
(515) 281-3183

Kansas Real Estate Commission  
(913) 296-3411

Kentucky Real Estate Commission  
(502) 425-4273

Mississippi Real Estate Commission  
(601) 987-3969

Nebraska Real Estate Commission  
(402) 471-2004

Oklahoma Real Estate Commission  
(405) 521-3387

Tennessee Real Estate Commission  
(615) 741-2273

## 1997 Commission Meeting Schedule

Licensees and members of the public are always welcome to attend the open meeting portion of Commission meetings. Tentative dates and places are listed below, but specific sites are not final. Anyone planning to attend a meeting should call the Commission office a few weeks before the meeting to learn the exact location and time.

Wednesday, January 8  
Jefferson City  
Wednesday, February 19  
Columbia  
Tuesday, April 1  
Springfield  
Wednesday, May 14  
Jefferson City  
Wednesday, June 25  
Kirksville  
Wednesday, August 13  
Kansas City  
Friday, September 26  
St. Louis  
Wednesday, November 19  
Kansas City

## Escrow Account Reconciliation

You've just received your monthly bank statement and completed your bank reconciliation. The outstanding checks and deposits have been accounted for and the escrow account balance in your books matches the bank statement. You're in balance, right? **WRONG!** If you end the reconciliation process at your checkbook balance, you have learned only one thing—you can add and subtract correctly. During the course of the reconciliation process, Commission examiners find that some brokers end their reconciliations when the checkbook balance matches the bank statement balance. However, examiners know that most brokers carry reconciliation to the next step, a step of paramount importance to the financial control of a real estate brokerage. This article is intended to focus on important factors the Commission considers to determine the liabilities to an escrow account.

Once a correct escrow balance has been obtained through the bank reconciliation, the liabilities that make up this balance should be examined. These liabilities to the sales escrow account include, but may not be limited to the following:

- Earnest money per pending contracts;
- Earnest money awaiting a mutual release;
- Earnest money in dispute;
- Funds escrowed for closed transactions;
- Funds (up to \$500) held for maintenance of the escrow account (bank charges). If the bank takes a monthly service charge or charges the account for checks, the balance of funds held for the maintenance of the account must be sufficient to cover the charges. If a broker waits until the bank statement is received and reimburses the funds, a shortage exists from the date of the charge until the deposit to replenish the funds;
- Security deposits being held.

Once a total has been obtained, it should be compared to the reconciled bank statement balance. If the two figures match, it's in balance, right? **MAYBE!** You must determine whether or not you have written authorization from all parties to the transaction for all funds maintained in escrow. Examples of some scenarios where written authorization would be required are:

1. The real estate contract indicates that you are the broker who will maintain the earnest money. Remember, if you are holding earnest money for a transaction and the contract indicates that a cooperating broker should be holding the funds, you have an overage. The overage would be due to the lack of written authorization to hold funds belonging to others. On the other hand, you would have a shortage if the real estate contract indicates that you are to maintain the earnest money and the cooperating broker is maintaining the funds.

2. A buyer decides to send you additional earnest money or the funds needed to close along with the earnest

money. All parties must agree in writing that these funds will be held in escrow until closing. Remember, in most instances, the contract only provides written authorization to hold the earnest money.

3. Funds are escrowed for repair. Again, written authorization must also be obtained to escrow funds for a closed transaction which means the buyer and seller must have agreed in writing as to the amount and where these funds will be maintained.

4. Funds collected for a closing maintained past the closing date can be a problem. All funds collected for a closing must be promptly disbursed from the escrow account. There are many valid reasons which may explain late disbursement. For example, the broker may be awaiting proper invoices for charges related to the transaction. If any funds are to be maintained longer than two banking days from the closing date, written authorization to hold the funds must be obtained from all parties having an interest in the funds.

For an overall reconciliation of your escrow account and your account liabilities, apply the following guidelines: (1) Reconcile to your bank statement balance and determine that your books reflect the proper balance; (2) Compare this balance to the liabilities to the escrow account; (3) Examine the liabilities to the account and determine that all funds are maintained with the proper written authorization. **YOU ARE NOW IN BALANCE!**

This same procedure can be used for all escrow accounts maintained by a real estate brokerage. The reconciliation process takes a snapshot of your escrow account position on a given day. When done on a monthly basis, any and all errors can be easily tracked and corrected. Remember, when your book balance matches the reconciled bank balance, the reconciliation has just begun.

NOTE: This article cannot cover all the possible situations which make up a liability to the escrow account. The main point of these examples is that written authorization from all parties having an interest in funds deposited for a real estate transaction must be obtained in writing as to the amount of funds to be held and where the monies will be maintained.

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